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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,751	02/07/2002	Shirley Wu Hunter	2618-17-C4-PUS-2	2578

22442 7590 03/30/2005

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/071,751

Applicant(s)

HUNTER ET AL.

Examiner

David J. Steadman

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment. (See 37 CFR 1.116 and 41.33(a)).

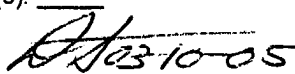
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See attachment.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: _____
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


David J. Steadman, Ph.D.
Primary Examiner
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ADVISORY ACTION

[1] The request for reconsideration in the response filed 2/17/2005 has been considered, however the amendment does not place the application in condition for allowance. The amendment to the claims filed 2/17/2005 would appear to overcome the objection, the rejection under 35 U.S.C. § 112, second paragraph, the new matter, written description, and scope of enablement rejections under 35 U.S.C. § 112, first paragraph, the rejection under 35 U.S.C. § 102(b), and the obviousness-type double patenting rejections as set forth in the Office action mailed 11/15/2004. However, the amendment has not been entered because claim 75 raises the issue of new matter and claim 70 does not comply with the requirements of 37 CFR 1.121 (see the attached "Notice of Non-Compliant Amendment.")

[2] Claim 75 was added in an amendment filed 10/7/2004. The examiner was able to find support for claim 75 at p. 14, lines 15-21 and p. 41, lines 3-23 of the instant specification as cited by applicants in that amendment (see p. 5, second full paragraph of the response filed 10/7/2004). In the amendment filed 2/17/2005, claim 75 has been amended to recite the limitation "...an immediate or delayed-type hypersensitivity response in an animal previously exposed to a protein..." As support for the recited limitation, applicants cite p. 1, lines 10-22 of the instant specification. The specification provides support for a hypersensitive response that is "an immediate or delayed-type hypersensitivity response" (see particularly p. 1, lines 16-17). However, the examiner can find no support for an epitope of SEQ ID NO:62 inducing an immediate or delayed-type hypersensitivity response in an animal previously exposed to SEQ ID NO:62 at p. 1

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or any other pages of the specification. As such, the specification does not support this recited limitation.

[3] Claim 70 does not comply with the requirements of 37 CFR 1.121 as claim 70 has been amended to depend from claim 69. However, claim 70 is identified by the status identifier "(Previously Presented)" As the claim is an amended claim, it should be identified with the status identifier "(Currently Amended)" instead.

[4] It should be noted that the examiner failed to reject claims 74 and 75 for reasoning similar to that set forth at item [9][a] of the Office action mailed 11/15/2004. In the interest of compact prosecution and to clarify the claims, applicants are requested to amend the term "said 6 amino acid sequence" in claims 74-75 to "said at least 6 amino acid sequence."

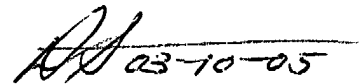
[5] Applicants' arguments in the amendment filed 2/15/2005 have been fully considered. However, in view of the non-entry of the amendment, applicants' arguments are not found persuasive to overcome the outstanding rejections as set forth in the Office action mailed 11/15/2004 for the reasons of record stated therein.

[6] In view of the non-entry of the amendment, the claim status is as follows:

- Claims 65-76 are pending.
- Claims 65-68, 70, and 75-76 are rejected.
- Claim 69 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- Claims 71-74 appear to be in a condition for allowance.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (571) 272-0942. The Examiner can normally be reached Monday-Thursday and alternate Fridays from 7:30 am to 5:00 pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (571) 272-0928. The FAX number for submission of official papers to Group 1600 is (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.


DAVID J. STEADMAN, PH.D.
PRIMARY EXAMINER